

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

May 13, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-20081 Ross Dress for Less v. ML Devel
USDC No. 4:20-CV-978

The court has granted the motion to supplement or correct the record in this case. The originating court is requested to add the attached motion and documents to their court's docket and to provide us with a supplemental electronic record. Counsel is reminded that any citations to these documents must cite to the supplemental electronic record.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED

MAY 13 2021

NATHAN OCHSNER
CLERK OF COURT

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By:

Christina C. Rachal, Deputy Clerk
504-310-7651

Mr. Paul Richard Genender
Ms. Misty Annette Hataway-Cone
Mr. Nathan Ochsner
Mr. Zachary Tripp
Mr. Nathaniel David White

United States Court of Appeals
for the
Fifth Circuit

ROSS DRESS FOR LESS, INC.,

Plaintiff-Appellant,

v.

ML DEVELOPMENT LP,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION, NO. 4:20-CV-978
HONORABLE LEE H. ROSENTHAL, CHIEF JUDGE

**PLAINTIFF-APPELLANT'S MOTION TO SUPPLEMENT
THE RECORD ON APPEAL**

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Counsel for Plaintiff-Appellant

Pursuant to Federal Rule of Appellate Procedure 27, Appellant Ross Dress for Less, Inc. respectfully moves to supplement the record on appeal with two additional documents concerning jurisdiction. On March 2, 2021, this Court asked the parties to “brief whether complete diversity exists amongst the parties to this appeal.” Briefing Notice, Mar. 2, 2021, ECF No. 00515763016. This Court may take judicial notice of “public filings with state agencies” that are relevant to the jurisdictional inquiry. *See Midcap Media Fin., LLC v. Pathway Data, Inc.*, 929 F.3d 310, 315 (5th Cir. 2019) (citing FED. R. EVID. 201(b)).

As an unincorporated entity, Appellee ML Dev LP’s citizenship is based on the citizenship of each of its partners. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1079-80 (5th Cir. 2008). ML Dev’s partners have publicly filed two documents with the Texas Secretary of State that would assist this Court in its jurisdictional inquiry. The first document is Window Dev GP LLC’s Texas Franchise Tax Public Information Report, a true and correct copy of which is attached as Exhibit A. The second document is the Magness Family Partnership LP’s Texas Franchise Tax Public Information Report, a true and correct copy of which is attached as Exhibit B. Ross obtained these documents from the Secretary of State Online Access system.

Ross has contacted ML Dev's counsel, and ML Dev does not oppose this motion.

For the foregoing reasons, Ross respectfully requests that this Court supplement the record on appeal with the documents attached hereto.

May 12, 2021

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Respectfully submitted,

By: /s/ Zachary D. Tripp

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Counsel for Ross Dress for Less, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of May, 2021, the foregoing motion was electronically filed with the Clerk of the Court by using the CM/ECF system. I further certify that all parties are registered CM/ECF users and that service will be accomplished through the CM/ECF system.

/s/ Zachary D. Tripp
Zachary D. Tripp

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of FED. R. APP. P. 27(d)(2)(A) because it contains 252 words. This motion also complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook 14-point font.

May 12, 2021

/s/ Zachary D. Tripp

Zachary D. Tripp
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Counsel for Ross Dress for Less, Inc.

EXHIBIT A

**Texas Franchise Tax Public Information Report**To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP),
Professional Associations (PA) and Financial Institutions**■ Tcode 13196 Franchise**

■ Taxpayer number										■ Report year				
3 2 0 3 3 9 0 9 7 3 3										2 0 1 8				
Taxpayer name WINDOW DEV GP LLC										You have certain rights under Chapter 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at 1-800-252-1381.				
Mailing address 5810 DIEMER RD										<input checked="" type="checkbox"/> Blacken circle if the mailing address has changed.				
City BROOKSHIRE		State TX		ZIP code plus 4 77423		Secretary of State (SOS) file number or Comptroller file number 800882370								

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office 2310 BAKER RD HOUSTON, TX 77094
Principal place of business 2310 BAKER RD HOUSTON, TX 77094

You must report officer, director, member, general partner and manager information as of the date you complete this report.

please sign below! This report must be signed to satisfy franchise tax requirements.

SECTION A Name, title and mailing address of each officer, director, member, general partner or manager.

3203390973318

Name MIKE MAGNESS	Title MM	Director <input type="radio"/> YES	Term expiration <table border="1" style="display: inline-table;"><tr><td>m</td><td>m</td><td>d</td><td>d</td><td>y</td><td>y</td></tr></table>	m	m	d	d	y	y
m	m	d	d	y	y				
Mailing address 2310 BAKER RD	City HOUSTON	State TX	ZIP Code 77094						
Name	Title	Director <input type="radio"/> YES	Term expiration <table border="1" style="display: inline-table;"><tr><td>m</td><td>m</td><td>d</td><td>d</td><td>y</td><td>y</td></tr></table>	m	m	d	d	y	y
m	m	d	d	y	y				
Mailing address	City	State	ZIP Code						
Name	Title	Director <input type="radio"/> YES	Term expiration <table border="1" style="display: inline-table;"><tr><td>m</td><td>m</td><td>d</td><td>d</td><td>y</td><td>y</td></tr></table>	m	m	d	d	y	y
m	m	d	d	y	y				
Mailing address	City	State	ZIP Code						

SECTION B Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

SECTION C Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
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Registered agent and registered office currently on file (see instructions if you need to make changes)
Agent: **MIKE MAGNESS**

You must make a filing with the Secretary of State to change registered agent, registered office or general partner information.

Office: 2310 BAKER RD	City HOUSTON	State TX	ZIP Code 77094
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The information on this form is required by Section 171.203 of the Tax Code for each corporation, LLC, LP, PA or financial institution that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation, LLC, LP, PA or financial institution.

sign here 	Title MM	Date 2-1-18	Area code and phone number (281) 802-9414
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Texas Comptroller Official Use Only

VE/DE <input type="radio"/>	PIR IND <input type="radio"/>
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10395663030 18033

EXHIBIT B

05-102
(Rev.9-15/33)**Texas Franchise Tax Public Information Report**To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP),
Professional Associations (PA) and Financial Institutions**■ Tcode 13196 Franchise****■ Taxpayer number**

3 2 0 3 5 5 0 6 4 0 4

■ Report year

2 0 1 9

You have certain rights under Chapter 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at 1-800-252-1381.**Taxpayer name****MAGNESS FAMILY PARTNERSHIP LP**

Blacken circle if the mailing address has changed.

Mailing address**2310 BAKER RD****Secretary of State (SOS) file number or Comptroller file number****City****HOUSTON****State****TX****ZIP code plus 4****77094****0800414353** Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.**Principal office****2310 BAKER RD, HOUSTON, TX, 77094 3119****Principal place of business****2310 BAKER RD, HOUSTON, TX, 77094 3119**

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You must report officer, director, member, general partner and manager information as of the date you complete this report.

Please sign below! This report must be signed to satisfy franchise tax requirements.**SECTION A** Name, title and mailing address of each officer, director, member, general partner or manager.

Name	Title	Director	<input type="radio"/> YES	m m d d y y
JULIE A MAGNESS				Term expiration
Mailing address	City			State ZIP Code
5810 DIEMER RD	BROOKSHIRE			TX 77423
Name	Title	Director	<input type="radio"/> YES	m m d d y y
MICHAEL B MAGNESS				Term expiration
Mailing address	City			State ZIP Code
5810 DIEMER RD	BROOKSHIRE			TX 77423
Name	Title	Director	<input type="radio"/> YES	m m d d y y
JULIE A MAGNESS				Term expiration
Mailing address	City			State ZIP Code
5810 DIEMER RD	BROOKSHIRE			TX 77423

SECTION B Enter information for each corporation, LLC, LP, PA or financial institution, if any, in which this entity owns an interest of 10 percent or more.

Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Name of owned (subsidiary) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership

SECTION C Enter information for each corporation, LLC, LP, PA or financial institution, if any, that owns an interest of 10 percent or more in this entity.

Name of owned (parent) corporation, LLC, LP, PA or financial institution	State of formation	Texas SOS file number, if any	Percentage of ownership
Registered agent and registered office currently on file (see instructions if you need to make changes)	You must make a filing with the Secretary of State to change registered agent, registered office or general partner information.		

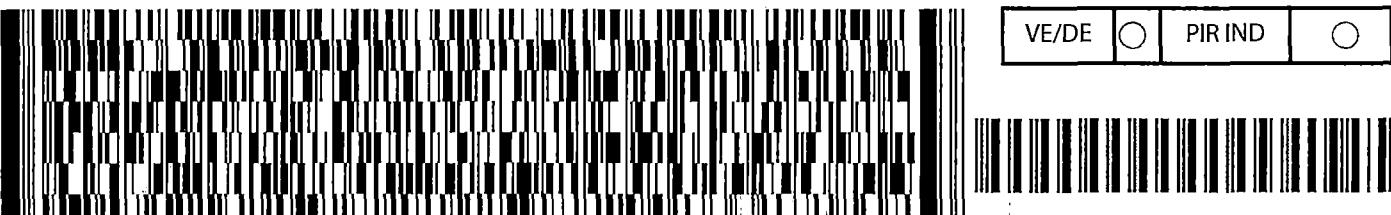
Agent: **MIKE MAGNESS**

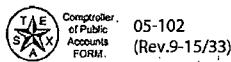
Office: 2310 BAKER RD	City	HOUSTON	State	TX	ZIP Code
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I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation, LLC, LP, PA or financial institution.

sign here	MIKE MAGNESS	Title	GENL PARTNER	Date	09/10/2019	Area code and phone number
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Texas Franchise Tax Public Information Report

To be filed by Corporations, Limited Liability Companies (LLC), Limited Partnerships (LP), Professional Associations (PA) and Financial Institutions

■ Tcode 13196 Franchise

■ Taxpayer number

3	2	0	3	5	5	0	6	4	0	4
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■ Report year

2	0	1	9
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You have certain rights under Chapter 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at 1-800-252-1381.

Taxpayer name

MAGNESS FAMILY PARTNERSHIP LP



Blacken circle if the mailing address has changed.

Mailing address

2310 BAKER RD

Secretary of State (SOS) file number or
Comptroller file number

City

HOUSTON

State

TX

ZIP code plus 4

77094

0800414353

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

2310 BAKER RD, HOUSTON, TX, 77094 3119

Principal place of business

2310 BAKER RD, HOUSTON, TX, 77094 3119

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Please sign below! This report must be signed to satisfy franchise tax requirements.

10000000000015

SECTION A Name, title and mailing address of each officer, director, member, general partner or manager.

Name	Title	Director	<input type="radio"/> YES	m	m	d	d	y	y
MICHAEL B MAGNESS									
Mailing address	City			Term	expiration				
5810 DIEMER RD	BROOKSHIRE								
Name	Title	Director	<input type="radio"/> YES	m	m	d	d	y	y
Mailing address	City			Term	expiration				
Name	Title	Director	<input type="radio"/> YES	m	m	d	d	y	y
Mailing address	City			Term	expiration				

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Agent: **MIKE MAGNESS**

You must make a filing with the Secretary of State to change registered agent, registered office or general partner information.

Office: **2310 BAKER RD** City: **HOUSTON** State: **TX** ZIP Code: **77094**

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I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director, member, general partner or manager and who is not currently employed by this or a related corporation, LLC, LP, PA or financial institution.

sign here	MIKE MAGNESS	Title: GENL PARTNER	Date: 09/10/2019	Area code and phone number: (281) 802 - 9417
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